10 January 1948

MEMORANDUM FOR MR. BRONSON:

Pursuant to your direct order given to me over the telephone from Frankfurt this morning, I shall attend the meeting of the "Investigating Committee" in the Henschel case at Kassel. As I have informed you, this is against my judgment.

In order to keep the record straight I must review the facts. On 30 December you called me to your office. Mr. Collison was present. You said that a Committee of Investigation composed of U.S.-U.K. representatives from the Economic Divisions, the Transportation Branches and the Decartelization Branches was being sent to Kassel to make an investigation of the Henschel case and report back to BIDEC. Mr. Collison said I would have to act as chairman of the meeting and get it organized. You agreed with that and emphasized in complimentary and flattering terms that I alone could adequately represent the Branch on this occasion, although I had not been consulted when you were negotiating with and making concessions to the British.

Later in the day when Mr. Collison sent me the file I discovered that you had set up the Committee by carrier sheet two weeks earlier and that its first standard was to determine whether an independent owner of any one of the Henschel plants could make a reasonable return on his investment. Since it was impossible to know what the investment would be, or how skilfully a new owner would manage it, or what would be regarded as a reasonable return (in addition to the fact that all of those considerations are completely outside the Law), I informed you that I could not serve on this committee. You then said that those terms of reference were "only temporary" and that I could "write my own ticket". (Subsequently you approved the second terms of reference which eliminated the objectionable features of the first.)

In assuring me that I could write my own ticket, you added that I must go to this meeting because "here is where the Henschel case is won or lost". That could only indicate that you intended to accept as final the recommendation of this committee. Consequently, as a member of it I would have my only hearing before a body which has no authority in law, and which you and Mr.Collison both said started out with a very strong prejudice. In illustration of that Mr. Collison told of his telephone conversation with Mr. Berno, the chief of one of the U.S. members of the Committee, who said "decartelization should go home and come back in ten years". I pointed out that my defeat before that Committee might be the end of my effectiveness in the Henschel case - that I would be placed in

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the position of merely "beefing" because I had lost and would not have the opportunity of arguing my position before you or BIDEC, where the real authority rests.

You continued to insist that I go, stating that I need not be a member of the Committee but could sit in my hotel room and guide the presentation of our case. That did not remove the objection. If I were there in charge of the presentation, and if the case was to be "won or lost" there, I would still be charged with the loss before a group which had no authority. I advised that as an Assistant Chief of Branch, and responsible for the Henschel case, I should not be overruled except by you or BIDEC.

I discussed this situation fully with responsible members of the Branch familiar with the case and each one of them agreed with the position I had taken. I asked you to ascertain the views of others in the Branch but so far as I am aware you decided not to do this, although continuing to insist on your position.

Our last conversation on the matter took place in your office on Tuesday, January 6. At that time you admitted that "without question" I am more interested in winning the Henschel case than anyone else in the Branch. I urged that you accept my judgment in the matter, knowing that I would do everything in my power to win the case and would do nothing which I thought would prejudice it. I said Mr. Rathbun could appear before the Committee and present our evidence and arguments, but I wanted to remain free to urge rejection of the Committee's report before you or BIDEC if that seemed necessary. Without disputing the validity of my arguments you continued to insist that I go to Kassel and manage the presentation of the case before the Committee. I finally stated that my judgment was so settled that I could not put myself in that position in the absence of a direct order from you. You said "Of course I would not give you a direct order. Come on, let's go to lunch". We have seen each other several times since and the subject of the Kassel trip has not been mentioned. I think anyone would have assumed, as I certainly did, that you would not insist on my going to Kassel against my judgment.

As further evidence, on Friday when Mr. Rathbun took you the new terms of reference you instructed him to report to you daily by telephone through third parties in Frankfurt. The procedure seems strange under any conditions, but I cannot imagine you, with your regard for military procedure, issuing such instructions if you had thought I was to be on hand in Kassel.

Today, however, when I called you in Frankfurt to get your authority to sign your name to necessary documents, you surprised me by asking when I was going to Kassel. I reviewed our understanding of January 6. However, you then insisted that I go, and stated that if you must put it on the basis of a direct order "it would have to be that way". You said I had had enough military training to know the obligations due the expressed desires of a Commanding Officer. You further said that you did not intend to discuss it any more over the phone or at any other time; and that you were in the middle of a conference with 15 people present.

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Thus it appears to me that in the past two weeks in connection with this matter you have reversed yourself on:

a. The terms of reference for the committee

b. My position on the Committee, and

c. Whether or not you would give me an order to attend.

However, I am going to Kassel as you ordered. I can't decide what you want me to do except, as you said, sit in my hotel room. Mr. Rathbun and I have worked steadily for an entire week and he has the situation perfectly in hand. I am completely satisfied with his ability to represent our position in this case. Moreover, I wish to reserve the right to express opposition before you or BIDEC in regard to any unfavorable conclusions this Committee may reach. Assuming that you adhere to your expressed decision, I am not a member of the Committee; and I further assume that the final authority of deciding the remedy in the Henschel case remains where the Law and General Order placed it.

/t/ JOHNSTON AVERY

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